IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.1924 OF 2003
ALONG WITH
WRIT PETITION (STAMP) No.28048 of 2003

WRIT PETITION NO.1924 OF 2003

Hindustan Lever Mazdoor Sabha)
Hindustan Lever House)
165/166, Backbay Reclamation)
Mumbai 400 020.).. Petitioner

Versus

Hindustan Lever Limited)
Hindustan Lever House)
165/166, Backbay Reclamation)
Mumbai 400 020.).. Respondent

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Hindustan Lever Mazdoor Sabha)
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165/166, Backbay Reclamation)
Mumbai 400 020.).. Respondent

Mrs. Meena H. Doshi for the Petitioner in Writ Petition No.1924 of 2003 and for the Respondent in Writ Petition (Stamp) No.28048 of 2003.

Mr.P.K. Rele with Mr. Piyush Shah for the Respondent in Writ Petition No.1924 of 2003 and for the Petitioner in Writ Petition (Stamp) No.28048 of 2003.

CORAM : SMT. NISHITA MHATRE, J.

JUDGMENT RESERVED ON : 3RD JULY 2004

JUDGMENT PRONOUNCED ON : 3RD SEPTEMBER 2004

JUDGMENT :

Both these Writ Petitions challenge the Award dated 7th September 2002 passed by the Industrial Tribunal, Mumbai in Reference (IT) No.39 of 1997. For the sake of convenience, the Petitioner in Writ Petition No.1924 of 2003 and the Respondent in Writ Petition (Stamp) No.28048 of 2003 will be called ` theUnion` and the Respondent in Writ Petition No.1924 of 2003 and the Petitioner in Writ Petition (Stamp) No.28048 of 2003 will be called `the Company`.

2. The Union claims to represent the employees who are known as field force employees working with the Company. The dispute in the present Writ Petitions relates to these employees. Correspondence was exchanged in 1957 between the Union and the Company with regard to the status of the field force employees, the locus of the union to represent them etc. This correspondence exchanged between the parties constituted an agreement according to the Union which was binding on both parties. Since 1957, the employees represented by the Union have been treated as workmen by the Company. The company has also recognised the union as the representative of the field force employees. By this Agreement the Union agreed to raise industrial disputes with regard to the service conditions of field force employees on an all India basis. This correspondence exchanged in 1957 constituted an agreement which continued to bind the parties as held by the Apex Court in the case of *The Workmen of M/s. Hindustan Lever Ltd. & others* vs. *The Management of M/s. Hindustan Lever Ltd*. reported in **1984 (1) LLJ 388**.

3. After the 1957 agreement several settlements were arrived at between the union and the Company. In the year 1971, a settlement was arrived at between the Union and the Company on various issues including wage scales dearness allowance and other allowances payable to the field force employees. This settlement of 1971 was terminated in the year 1973 by the Union. A charter of demands was submitted to the Company by the Union on behalf of the field force employees. It appears

that in the year 1975, certain unilateral changes were brought about by the Company in the conditions of service of the field force employees, contrary to the 1971 settlement which was based on the 1957 agreement. These changes, according to the Union were arbitrary and adversely affected the workmen. The Union, therefore, filed a Complaint of unfair labour practice under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of the Unfair Labour Practices Act, 1971 (hereinafter referred to as the `MRTU & PULP Act') complaining of the illegal change brought about in the emoluments of their members from 1975 onwards by non implementation of the 1957 agreement and the 1971 settlement governing the service conditions of the field force employees. The Industrial Court by an order dated 25th July 1995, held that by withdrawing certain benefits which were available to the workmen under the 1957 agreement and the 1971 settlement, unilaterally, the Company had committed an unfair labour practice. The Industrial Court directed the Company to pay the amounts which were deducted and to implement the settlement of 1971. The parties were further directed to negotiate on the 1973 charter of demands which was still pending consideration before the Company.

4. Aggrieved by the order of the Industrial Court, the Company filed a Writ Petition in this Court. This Court upheld the findings of the Industrial Court that an unfair labour practice had been committed by the Company by failing to implement the settlement of 1971 and the agreement arrived

at through the correspondence entered into between the parties in 1957. However, the order of the Industrial Court was set aside as this Court observed that the Complaint was barred by limitation. The Union then filed Special Leave Petition before the Apex Court which was decided on 29th August 1996. The Apex Court in its judgment in the case of *Hindustan Lever Mazdoor Sabha* vs. *Hindustan Lever Limited & another* reported in **1998 I CLR 857** has held that the High Court had failed to appreciate the effect of the judgment of the Apex Court delivered in the year 1984 in respect of the 1957 agreement. The Apex Court held that its earlier decision reported in **1984 (1) LLJ 388** (supra) gave a fresh cause of action to the Union to agitate the unilateral change introduced by the Company by its order of June 1975. While reversing the findings of this Court on limitation, the Apex Court confirmed the judgment of the Industrial Court in Complaint (ULP) No.751 of 1984.

5. Soon thereafter, on 3rd February 1997 the Company terminated the agreement of 1957. It appears that during this entire period, the Company unilaterally paid certain allowances to the Field Force employees.

6. In March 1996, individual settlements were arrived at between the Company and some of the field force employees relating to service conditions. The settlement stipulated that the signatory had nothing to do with the Union and that the Union had never represented him. The individual workman gave up the right available to him under the 1971

settlement between the Company and the Union. It further stipulated that after 1975 the Company had been making annual revisions in the pay packet and other benefits available without any representation from the Union. The workman signing this settlement had agreed to give up the rights and claims to the conditions of service under 1971 settlement in order to avail of the benefits introduced by the Company post-1975. The workman also agreed that the 1957 agreement was validly terminated by the Company by its letter dated 13th January 1984 and that the workmen and the Company had ceased to be governed by that agreement. The workman was informed through the settlement that although the Company was required to implement the 1971 settlement and negotiate the pending charter of demands of 1973 with the Union in view of the decision of the Industrial Court dated 25th July 1995, if any Court came to the conclusion that the settlement being signed was not a valid settlement, the benefits available under the settlement would be discontinued. The settlement of 1996 was signed by individual workmen before the judgment of the Apex Court of August 29, 1996 confirming the order of the Industrial Court declaring that the Company had indulged in an unfair labour practice under item 9 of Schedule IV. Subsequently similar settlements were arrived at in 1997, 1998 and 1999 with individual workmen by the Company.

7. Once the Apex Court delivered the judgment in 1996 confirming the order of the Industrial Court, the Union pursued the charter of demands of

1973 and the disputes were referred for adjudication before the Industrial Tribunal on 3rd May 1997. After the long passage of time during which the charter of demands remained pending, the Reference was confined to demands in respect of basic wages, adjustment, gratuity and retrospective effect. Pleadings were filed by both parties before the Tribunal. According to the workmen represented by the Union, the financial position of the Company was sound and the Company could bear the burden which would be cast on it if the Tribunal had granted the demands under the Reference. The Union also claimed parity on behalf of the workmen as, according to them, the field force employees and the workers were given benefits unilaterally. The Union also had stated in the Statement of Claim that the voluntary payments made by the Company from 1975 onwards till 1995 should be taken into consideration while adjudicating upon the demands. It was also contended that these unilateral changes which the Company had introduced in respect of various allowances had become implied conditions of service of field force employees which could be taken into consideration while deciding the Reference.

8. In its Written Statement, the Company pleaded that there was no need for any revision since the conditions of service of the field force employees had been revised twenty one times from 1975 till 1995. They also contended that settlements had been entered into between individual workmen and the Company which were binding on all the field force employees since a large body of workmen had accepted the settlements

without protest. It was also pleaded that the charter of demands which resulted in the Reference was of no consequence since the workmen had been granted a huge rise in the pay packet in view of the pending charter of demands. Evidence was led in the matter by both the Union and the Company. The Industrial Tribunal by its Award dated 7th September 2002 allowed the Reference partly by declaring an Award in terms of the settlement of 1997. The Tribunal also directed that arrears should be paid to the concerned workmen with effect from the date of the Reference i.e. from 1997 within two months of the publication of the Award.

9.Mrs.Doshi, learned Advocate for the Union, submits that between the period 1975 to 1996, when the individual settlement was signed, over 900 persons had retired from the Company. While making an Award in terms of the settlement of 1997, the Tribunal lost sight of the fact that the settlement of 1997 gave no retrospective effect. Therefore, the persons who retired between the period 1975 to 1995 were not granted any relief. She submits that although the reasoning of the Tribunal indicates that it wanted to grant benefits to these workmen while passing the Award, the Tribunal has lost sight of the fact that the payment under the 1997 settlement, in which terms the Award has been made, is prospective. Thus the persons who retired between 1975 and 1995 do not get any benefit under the 1997 settlement. She then submits that after the dispute was referred, deductions were made from the salary of workmen who had not signed the 1996/1997 settlements. She, therefore, submits that

deductions made in this manner are contrary to the provisions of Section 9A of the Industrial Disputes Act, 1947 (hereinafter referred to as the `ID Act`) since no notice of change was issued. According to the learned Advocate, the action of the Company in effecting such deductions is also contrary to the provisions of Section 33(1) of the Industrial Disputes Act, 1947 as the condition of service had been altered during the pendency of a Reference.

10.Mr.P.K.Rele for the Company submits that the Award need not be interfered with since the settlement of 1957 was validly terminated by the Company in April 1997. It was replaced by the settlement of 1997. The settlement of 1997 stipulates that the field force employees are not workmen and, therefore, the Reference itself could not proceed in respect of persons who are not workmen. He then contended that the Union had no right to agitate the grievance on behalf of the field force employees since they were not members of the Union. He then submits that when a body of workmen who were in service had accepted the settlement, although by individual settlements, such a settlement was binding on all workmen. He submits that once the workmen who were in service during the years 1996, 1997 and 1998 had accepted the said settlements, there was no need to make any Award for the benefit of those who retired from 1975 to 1995. According to the learned Advocate, it is not necessary that in every wage adjudication benefits must be given to all the workmen. When the Tribunal made an Award in terms of the settlement of 1997, it

was not necessary that the retired employees should also be benefited. A Reference cannot be adjudicated upon for retired employees. The Tribunal has considered all aspects of the matter, including the fact that benefits had been given even to the retired employees from 1975 onwards unilaterally by the Company and, therefore, according to the learned Counsel, there was no need for the Tribunal to grant any further relief to these workmen.

11.It appears that after the Reference was made, the Company made an application to the Tribunal to make an Award in terms of 1998-99 settlement. This application was rejected by the Tribunal. Aggrieved by the order of the Tribunal, the Company filed Writ Petition No.2313 of 2000 before this Court. A learned Single Judge of this Court (R.J.Kochar, J.), has directed the Tribunal to make its Award in respect of the field force employees who had accepted these individual settlements. This Court has held thus :

> `... The tribunal might decide the question of validity of the termination of the 1957 agreement. As far as the Field Force employees are concerned, they have clearly accepted the validity of the termination of the said agreement by the company and they have no dispute on that point. The agreement was validly terminated according to these employees. If that is so, as far as these employees are concerned, that issue has become a totally irrelevant and non-issue, which has already been resolved between the parties. The tribunal can decide and would definitely decide all the issues which are pending between the union and the Petitioner company in respect of the other workmen represented by the Union.`
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> (Emphasis supplied)

12. Therefore, the Tribunal was expected to decide the Reference with special regard to those who had not accepted the agreements and especially with respect to those who had retired between the period 1975 to 1995.

13. The first issue which arises is whether a dispute existed when the Reference was made for adjudication in 1997. The next issue, therefore, which falls for consideration is whether there can be adjudication in respect of a charter of demands regarding basic wages in the time scale, fitment, gratuity and retrospective effect for persons who had retired before the Reference was made. The third issue would be whether the Tribunal in fact has made an Award at all for these workmen who had retired between 1975 and 1995. Lastly the issue to be decided is whether the Tribunal while making an Award in terms of the settlement of 1997 which was signed by individual workmen can make it applicable to the rest of the workmen who were not signatories to the settlement.

14. The Tribunal has framed ten issues while adjudicating the Reference. One of the issues is whether the first party Company proves that in view of the settlements entered between the individual Field Force employees and the Company in the years 1996, 1997 and 1998, there is no industrial dispute as defined under Section 2(k) of the Industrial Disputes Act, 1947 in existence. This issue has been answered in the negative and, therefore, the Company is aggrieved by the finding of the

Tribunal. While deciding Writ Petition No.2312 of 2000, Kochar, J., had very clearly observed that while the issue becomes totally irrelevant in respect of the employees who had signed settlements, the Tribunal could decide and would definitely decide all the issues which are pending between the Union and the Petitioner Company in respect of the other workmen represented by the Union. In fact, the learned Judge has recorded that Mr.Rele, who appeared for the Company in that matter as well, had made it abundantly clear that the Petitioner Company had no objection to proceed with the adjudication as far as the demands of other workmen were concerned. The learned Judge has while deciding the Writ Petition held that the agreements arrived at between the individual workman and the Company in the years 1998 and 1999 could be accepted as fair and reasonable and an Award in terms of those settlements should be made by the Tribunal in respect of those workmen who were signatories to the settlements. However, as is evident from the judgment in Writ Petition No.2312 of 2000, the issue as to whether an industrial dispute subsists was clearly decided inasmuch as both the parties agreed that the Tribunal could proceed with the adjudication in respect of the demands of the other workmen which were referred to it. That being the position, it is difficult to understand how the Company can now contend that no industrial dispute existed when the Reference was made in 1997 because the Settlement of 1996 was already signed. Furthermore, the Settlement signed in 1996 was with individual workmen and, therefore, cannot be binding on those who were not signatories to the

Settlement. The 1996 Settlement was signed by individual workman where it was made amply clear that the agreement would be binding on the signatories as they had given up the rights which flow to them from 1957 settlement and the 1971 settlement. When the persons who had not signed the 1996 settlement had not given up their claim either under the 1957 Settlement or the 1971 Settlement or the charter of demands which was still pending, it is impossible to accept the submission made on behalf of the Company that there was no industrial dispute subsisting at the time when the Reference was made. The Tribunal has rightly held that the dispute was subsisting and, therefore, has proceeded to decide the Reference. The industrial dispute which was pending before the Tribunal was a collective dispute raised on behalf of the employees by the Union. Therefore, the submission that an individual settlement could negate the pending Reference cannot be accepted. Merely because a large number of workmen had accepted the 1996 settlement, it cannot lead to the conclusion that the charter of demands raised by the Union no longer existed when the Reference was made. Although a number of workman may have signed individual settlements relating to the demands which were referred, it would not necessarily mean that the dispute referred no longer subsisted or when the Reference was made, there was no pending dispute. Admittedly, a large number of workmen had retired from the period 1975 to 1995. These workmen had not signed any settlement giving up their claims under the charter of demands raised on their behalf by the Union. Therefore, although in the year 1996 some individuals had

given up the rights accrued to them under the earlier settlements, those settlements and the stipulations in those settlements would not be binding on the persons who had retired between 1975 and 1995. Therefore, at least for those who had not signed any settlement with the Company in respect of the charter of demands, the demands still existed and when the Reference was made in 1997, the dispute between these employees and the Company definitely existed.

15. The contention that the Reference itself was bad because no industrial dispute subsisted at the time when the Reference was made cannot be raised at this stage. No such contention was raised in the Written Statement before the Tribunal. The Company proceeded on the basis that the 1996, 1997 and 1998 settlements had resulted in settlement of disputes and, therefore, there was no need to adjudicate upon the Reference. Therefore, the Tribunal was right in coming to the conclusion that the industrial dispute subsisted in respect of those employees who had not entered into settlements in the years 1996, 1997 and 1998.

16. The next issue is whether there can be an adjudication in respect of the charter of demand regarding the basic wages in a time scale, fitment, gratuity and retrospective effect for persons who had retired when the Reference was made. The charter of demands was submitted by the Union in the year 1973 by terminating the settlement of 1971. This charter of demands was pending before the Company when it unilaterally gave

certain benefits to the workmen from 1975 onwards. According to the Company, twenty to twenty five revisions in wages were given by the Company between the period 1975 to 1995. It was when the Company refused to discuss the charter of demands pending and made unilateral deductions from the wages of the employees in 1984 that the Union filed a Complaint before the Industrial Court under Item 9 of Schedule IV of the MRTU & PULP Act, 1971. Ultimately, the long drawn litigation culminated with the Supreme Court affirming the order of the Industrial Court allowing the Complaint. The Company was directed to negotiate on the 1973 charter of demands besides other reliefs being granted in favour of the Union. Therefore, all those persons who were in employment from the year 1975 to 1995 when the benefits of the 1971 settlement were being given to the workmen would be entitled to make a grievance regarding the basic wages, fitment and gratuity at least till the time when they retired from service. As held in the case of *U.P.Electric Supply Co. Ltd. vs. Workmen* reported in **(1971) 3 SCC 495,** demands can be adjudicated upon even in a closed concern provided the claim is for benefits which accrued to them in the past. However, the benefits flowing from the Award would be available to the workmen only till the closure of the concern. The same view has been taken by a learned Single Judge of this Court in *Industrial Workers Union* vs. *Neo Pharma*, **2003 (3) CLR 894**. Conversely, in my view, an individual workman who has retired would be entitled to the benefits which would be available to other employees if there is an adjudication on general demands. Such demands can be

granted even to workmen who had retired from service prior to the Reference being made so long as the dispute was raised before the retirement. That being the position, the retirees between 1975 and 1995 would certainly be eligible to the benefits flowing from an adjudication in respect of time scale, fitment, gratuity and retrospective effect till they retire from service. The submission of Mr. Rele for the Company that a Reference cannot be made for retired employees cannot be accepted. When the charter of demands was pending consideration by the Company, all the retired employees who were in employment when the charter of demands was raised, would be entitled to the benefits of the Award if the Award was made applicable retrospectively.

17. The question now is whether in fact in the present case the Tribunal has considered the demands in relation to the workmen who had retired from 1975 to 1995 while passing the Award. The Tribunal has framed an issue as to whether it could make an Award in terms of the individual settlements for the years 1996, 1997 and 1998. While answering this issue in the affirmative, the Tribunal has held that the Award was being made in terms of the settlement of 1997. While making this Award, the Tribunal was conscious of the fact that he was deciding the Reference qua only the retired employees by the judgment of Kochar, J. (Writ Petition No.2313 of 2000), the Tribunal was directed to make an Award in terms of the settlements signed by individual workmen in the years 1998 and 1999. However, while deciding the issue, the Tribunal has completely

misdirected itself. It has drawn a presumption in favour of the Company that the settlements entered into by them with the individual workmen in 1997 are just, fair and proper because they have been signed by most of the individual workmen. There was no doubt that the workmen who retired between 1975 and 1995 were not signatories to the individual settlements but had been given certain benefits by the Company unilaterally by revising the allowances payable to the workmen. However, these allowances having been paid unilaterally by the Company and not in lieu of the pending charter of demands, the Tribunal ought to have considered whether these revisions or allowances paid unilaterally by the Company could be taken into consideration while granting the demands of the workmen. It is the case of Mr.Rele for the Company that the Tribunal in fact has adjudicated the dispute which was pending as directed by Kochar, J. and has arrived at a conclusion that no revision need be given to those who retired between 1975 and 1995 by making an Award in terms of the settlement of 1997. The settlement of 1997 admittedly has been signed by a few individuals with the Company. This settlement cannot be binding on those who are not signatories to the settlement. I cannot with respect subscribe to the view taken by the Madras High Court in the case of *Management of Binny Ltd* vs. *The Presiding Officer and others* in **Writ Petition Nos.1471 and 7771 of 1999** and **W.M.P.Nos.2086, 11091 and 15934 of 1999**. A copy of this judgment has not been made available to me. However, paragraph 73 of that judgment has been extracted in the judgment of Kochar, J., which reads thus :

> `73. Though this contention is attractive and the learned Counsel is also supported to a certain extent by the pronouncement of the Apex Court on the facts of the case, it is clear that it is not an individual settlement really each individual signed the settlement. In fact, identical settlements had been entered between the Management and all the workmen employed in the industry in question and therefore it cannot be said that it is an individual settlement, but on the other hand, it is a settlement between the entire block of workmen on one side and the employer. It is being pointed out by Mr.Kurian that it is the Union which had been adopting a particular course and which course had compelled the workmen to negotiate and sign settlement individually. It is true that if one of the individual had signed such a settlement, it could be branded as invalid and unenforceable as it is not an individual grievance, but in the present case, all the workmen employed in the industry in question have signed the settlement providing for identical benefits containing identical clause in all respects. Merely because, individual workmen have signed individually, it cannot be said that it is a settlement with an individual workman. But in fact, it is a settlement with all the workmen. Therefore, this settlement cannot be avoided and it is binding on the workmen.`

18. The definition of `settlement` in Section 2(p) of the ID Act reads as follows:

> `2(p) `settlement` means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer.`

19. The settlement of 1997 is signed by individual workmen and the representative of the Company. It has been signed under Section 2(p) read with Section 18(1) of the ID Act. Such a settlement cannot be, by

any stretch of imagination, made applicable to those persons who were not party to the settlement. For examining whether the settlement is binding on other workmen, one will have to turn to Section 18 of the ID Act. Section 8(1) in unambiguous terms stipulates that a settlement arrived at by an agreement between the employer and the workman otherwise than in the course of conciliation proceedings shall be binding on the parties to the agreement. Therefore, no other person but the parties to the agreement are bound by the contents of that settlement. It is only when a settlement is arrived at during the course of conciliation proceedings that all parties to an industrial dispute are bound by the same. In fact, under Section 18(3) of the ID Act, a settlement arrived at in the course of conciliation proceedings is binding on all parties to the industrial dispute or all other parties summoned to appear in a proceeding as parties to the dispute or when one of the party is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all parties who subsequently become employed in that establishment. Section 18 has been interpreted many a times by the Apex Court and it is trite law that a settlement which is not arrived at in conciliation but is a settlement under Section 2(p) of the ID Act can be binding only on the parties to the settlement. Therefore, in my view, those who retired between 1975 and 1995 are not bound by any settlement which they have not signed. In any event, they are not bound by the 1996 or 1997 settlement. The Tribunal while deciding that an Award can be

made in terms of the 1997 settlement even for those employees who had retired from 1975 to 1995, has not discussed the effect of such an Award. It is difficult to follow the reasoning of the Tribunal for accepting the 1997 settlement. According to the Tribunal, it was necessary for the workman to justify the demands on the basis of the principle of industry-cum-region. The Tribunal was impressed with the submission made by the Company that since all but two Field Force employees had signed the settlement of 1996 and 1997, it would be proper to make an Award in terms of 1997 settlement. While arriving at the conclusion that all but two persons had signed the settlements, the Tribunal completely ignored the fact that a large number of workmen which, according to the Union was about 900, had retired between the period 1975 and 1995. While accepting the settlement of 1997 and making an Award in terms of that settlement, the Tribunal has ignored these workmen who were not signatories to the settlement. There is no doubt that the Tribunal could have accepted the 1997 settlement if it was found fair and proper and it was sufficient to off-set the demands raised by the workmen. However, the Tribunal would have also to consider whether a settlement which was made prospectively could be made applicable to those workmen who had retired between 1975 and 1995. The Tribunal, in my view, could not have ignored and belied the hopes of this large body of workmen by accepting and making an Award in terms of the 1997 agreement without considering whether it should be made with retrospective effect. The Tribunal has given no reasons in its Award for denying the claim of the workmen who had retired

before the Reference was made. Although the Tribunal was conscious of the fact that while remanding the Reference, Kochar, J., had directed the Tribunal to adjudicate the demands of the other workmen, he has not in fact considered their demands. The Tribunal accepted the statement which showed an increase in salary and perquisites given to the employees from 1975 to 1999 by the Company.

20. The Union, in the present Reference, claimed parity with the clerical employees. The Tribunal was, therefore, required to consider whether such parity ought to have been given. There is no dispute that historically the Field Force employees were paid higher wages than the clerical staff. This has been recognised in the Bhojwani Award published in Maharashtra Government Gazette Part-I dated 17th November 1977. It appears that the dispute regarding general demands pertaining to the clerical staff was referred for adjudication in 1997 to the Industrial Tribunal. The revision sought by the Field Force employees is also based on the fact that there has been an upward revision in the pay scales of the clerical staff after 1971. However, the basic pay of the Field Force employees has not been revised during this period. The financial position of the Company being sound, the Tribunal ought to have considered the position and decided whether in fact the Field Force employees were being paid higher basic wages than the clerical staff from the period when the charter of demands was raised till the Reference was made.

21. In the case of *National Textile Corpn. (APKKM) Ltd.* Vs. *Sree Yellamma Cotton, Woollen & Silk Mills Staff Association*, **2001 I CLR 1006**, the Apex Court held that whether there should be parity in payment between the employees working in the establishment in different categories is to be decided with a sense of fairness in providing different scales of pay. What has to be decided according to the Apex Court is whether the emoluments paid to one category of workmen become unfair in view of increase in emoluments given to other class of employees. The Tribunal in the present Reference has not considered the fact that the wage differential in the basic wages paid to the Field Force employees and the clerical staff had been obliterated with the passage of time. This fact itself warranted an upward revision in the basic pay of Field Force employees. Had the Tribunal applied its mind to this fact, in all probability the benefits flowing from the Award would have been granted to those who retired from the years 1975 to 1995.

22. The Industrial Court while deciding Complaint (ULP) No. 751 of 1984 had held that while negotiating on the charter of demands, the parties were to consider the increases given by the Company unilaterally from 1975 onwards. The Tribunal while considering the increases has only decided that 1997 settlement should be made applicable to all the workmen but has not considered whether any benefits would be applicable under that settlement to those who had retired earlier. There is no discussion at all in the Award as to whether the Tribunal had denied

the benefits of the Award to those who had retired by 1995 nor is there any discussion as to why the benefits were denied. The Tribunal has not considered the principles which are required to be borne in mind in mind while considering the matter regarding wage adjudication.

23. As stated earlier, the settlement of 1997 cannot be binding on other workmen except the individual workmen who had signed the said settlement and the Company. Therefore, the Tribunal was in error in making an Award in terms of the 1997 settlement ignoring the claims of about 900 workmen who had retired between the period 1995 and 1995. The strength of these workmen has been reduced to just over 100 at the present stage. In my view, therefore, the Reference will have to be remanded for the Tribunal to adjudicate on the demands raised by the workmen for the period between 1975 and 1995.

24. Mrs. Doshi, learned Advocate for the Petitioner Union, has submitted that instead of remanding the matter, this Court under Article 226 of the Constitution of India can always decide the amount which the workmen should be granted. She submits that the workmen concerned are in the evening of their lives and they do not have the capacity or the wherewithal to litigate against the Company. She, therefore, submits that this Court while sitting in its extra ordinary writ jurisdiction can exercise the same powers as the Industrial Tribunal. She supports this submission by relying on the judgment of the learned Single Judge of this Court in *ICI*

India Ltd. Vs. *Presiding Officer and others*, **1993 I CLR 753**, and Gujarat Steel Tubes Ltd. vs Gujarat Steel Tubes Mazdoor Sabha, 1980 I LLJ 137. In the case of *ICI India Ltd.* (supra), this Court has held thus :

> `88. The extra-ordinary constitutional power vested in the High Court is intended to seek and interdict injustice, wherever and whatever. I am not impressed by the submission of the petitioner that in having sought a writ of certiorari in its writ petition, the hands of this Court are tied so that this Court can either issue a writ of certiorari or none at all. Whatever the prayer made by the petitioner before the Court, the exercise of power, its mode and manner, is the prerogative of the Court. It is to be suitably moulded to remedy injustice. This perception and ethos permeates my approach to the problem.`

25. In the present case, the workmen have been striving for justice ever since 1973. For a period of almost 30 years they have faced the vicissitudes of the legal system and have tried their best to secure justice. Many workmen have expired during this period. I am informed that approximately 100 workmen would now be covered by the Award. The workmen concerned are well over 75 years of age. To drive such workmen back to the Tribunal for another round of litigation would, in my view, break their backs and result in extreme prejudice and hardship to them. Although I am aware that as a rule the High Court should not substitute its findings in place of an order which is passed within the jurisdiction of a lower authority like the Tribunal, it is not necessary that in every case the High Court should remand the matter back to the Tribunal. When the circumstances warrant this Court to take affirmative action while sitting in its writ jurisdiction, this Court can always substitute the findings of

the Tribunal as held by the Apex Court in *Gujarat Steel Tubes Ltd.* vs. *Gujarat Steel Tubes Mazdoor Sabha,* **1980 I LLJ** 137, *Nirmal Singh* vs. *State of Punjab & Ors.,* **AIR 1984 SC 1619**, *Telco Convoy Drivers Mazdoor Sangh & Another* vs. *State of Bihar and others*, **AIR 1989 SC 1565** and a decision of a Division Bench of this Court in *Lalbavta Hotel & Bakery Mazdoor Union and another* vs. *Bharat Petroleum Corpn. Ltd. and others* (**Writ Petition No.891 of 1992)** dated 11*th December 1992, per P.D.Desai C.J. and B.N.Srikrishna, J).* I am, therefore, fortified in my view that rather than a remand, ends of justice would be met if the findings of the Tribunal are substituted in the following manner for the following reasons.

26. The Reference was made in the year 1997. The disputes referred for adjudication were contained in the charter of demands of 1973. It appears that the Reference was made after the judgments of the Apex Court reported in 1998 I CLR 857 confirming the order of the Industrial Court in Complaint (ULP) No.751 of 1984 was delivered. The Company then started making unilateral deductions from the payments made to the workmen. Deductions had been made from the salary of even those workmen who had retired between 1975 and 1995. As rightly submitted by Mrs.Doshi for the Petitioners, such deductions would be contrary to the provisions of Section 9A of the ID Act since no notice of change was issued. Besides this, the provisions of Section 33(1) were also attracted since the service conditions had been altered to the prejudice of these

workmen, pending the Reference. A statement showing the loss incurred per month in the gross wages of Field Force employees comprising of Salesman/Marketing Research Investigators after 1975 at the minimum and maximum of the basic pay has been annexed to Writ Petition No.1924 of 2003 at pages 256 and 257. This statement is not controverted by the Company. On an average in the year 1995, the workers have not been paid around Rs.1,500/- per month by way of other allowances. Deductions to that effect have also been made from their salaries. In my view, the ends of justice would be made if the workmen are paid as per the 1971 settlement and are also paid the allowances which the Company unilaterally had paid to them during the period from 1975 to 1995. There is no dispute that while paying these allowances the Company made certain deductions which the Industrial Court has already found was illegal. In my view, the ends of justice would be met if the Company complies with the order of the Industrial Court and also pays the allowances granted unilaterally from 1975 to 1995. The Company shall make payment of the amounts mentioned in Column 10 of the Statement at pages 256 and 257 to Writ Petition No. 1924 of 2003.

27. The Award dated 7th September 2002 passed by the Industrial Tribunal, Mumbai in Reference (IT) No.39 of 1997 is modified accordingly.

28. Writ Petition No.1924 of 2003 is disposed of accordingly. Writ Petition (Stamp) No.28048 of 2003 is dismissed. No order as to costs.

29. Mr.Rele seeks stay for four weeks. Mrs.Doshi has no objection. Stay granted for four weeks.

30. Certified copy expedited.